

In the Court of Appeals of the State of Alaska

Ishmael Sergie,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-13863**

Order

Date of Order: **July 30, 2021**

Trial Court Case No. **4BE-21-00205CR**

Before: Allard, Chief Judge, and Harbison and Terrell, Judges

Ishmael Sergie appeals the bail order entered by the superior court on June 24, 2021. For the reasons explained here, we remand this case for further proceedings regarding Sergie’s ability to meet the monetary conditions of release.

Sergie is charged with one count of first-degree sexual assault, four counts of first-degree assault, three counts of second-degree assault, and one count of third-degree assault based on alleged sexual and physical assaults against his then-girlfriend, A.N. in his home community of Akiak. Because of the seriousness of the charges, Sergie — who is 16 years old — has been auto-waived into adult court.¹

According to the charging documents, Sergie forced A.N. to have sex with him and he assaulted her “by hitting her with a rifle, hitting her with a metal folding chair, and punch[ing] her multiple times in the face causing injury.” Sergie is also alleged to have strangled A.N. to the point of unconsciousness. According to A.N., Sergie has been violent in the past and he threatened to kill her or her family if she reported the violence to anyone.

¹ See AS 47.12.030(a)(1).

The judge at arraignment set bail at \$100,000 cash-only performance bond. Sergie applied for a bail review, requesting that the cash-only performance bond be replaced by two 24-hour third-party custodians.

At the bail hearing, the superior court approved the proposed 24-hour third-party custodians — Sergie’s uncle and grandfather. The court also reduced the performance bond to \$25,000 cash only. The court refused to reduce the performance bond any lower, finding that a \$25,000 cash-only performance bond “is necessary to protect the victim in this case even with the distance from Akiak to Kwethluk.” (The victim is apparently currently living in Kwethluk; Sergie’s bail conditions require him to remain in Akiak.)

Following this ruling, Sergie requested to present testimony from his father as to the family’s finances and ability to pay the \$25,000 performance bond. The superior court refused to allow this testimony, stating that it believed that \$25,000 was the “appropriate” amount even if it was beyond Sergie’s ability to pay.

Sergie now appeals that ruling, arguing that the superior court erred when it refused to hear testimony regarding the family’s ability to pay. Sergie also argues that the \$25,000 performance bond is excessive.

The State partially opposes Sergie’s bail appeal. The State argues that a significant cash-only performance bond would be appropriate given the seriousness of the charges. The State also argues that the performance bond is not duplicative of the supervision provided by the third-party custodians because the performance bond will help further incentivize Sergie and the third-party custodians to ensure compliance with the bail conditions.

The State concedes, however, that it was error for the superior court to refuse to hear testimony regarding the family’s ability to post the \$25,000 cash-only performance bond. The State also acknowledges that when a trial court sets bail above the amount the defendant is able to post, the trial court is required to provide case-specific reasons for why this amount of monetary bail is necessary, given all of the other bail restrictions that exist. The State concedes that the superior court failed to provide such an analysis in this case.

Having independently reviewed the record, we conclude that the State’s concessions are well-founded.²

Alaska Statute 12.30.011(c) provides a non-exclusive list of factors that a superior court must consider when setting bail. One of these factors includes “assets available to the person to meet monetary conditions of release.”³ Accordingly, it was error for the superior court to refuse to hear testimony regarding the family’s finances, and it was error for the court to refuse to consider the family’s finances when setting bail.⁴

² See *Marks v. State*, 496 P.2d 66, 67-68 (Alaska 1972) (requiring an appellate court to independently assess whether a concession of error “is supported by the record on appeal and has legal foundation”).

³ AS 12.30.011(c)(8).

⁴ AS 12.30.011(c)(8); cf. *Camara v. State*, 916 So.2d 946, 947 (Fla. App. 2005) (recognizing that monetary bail that exceeds the financial resources of the defendant “is tantamount to no bond at all” and requiring evidence of defendant’s resources to be heard and considered before bail is set); *Vaneyck v. State*, 2018 WL 11306175, at *4 (Alaska App. Oct. 9, 2018) (unpublished) (acknowledging that bail set at an amount financially impossible for the defendant to meet does not serve the goal of incentivizing the defendant).

Additionally, although criminal defendants do not have an absolute right to monetary bail in an amount they can afford,⁵ both the United States and Alaska Constitutions prohibit the imposition of “excessive” bail.⁶ Excessive bail is that which goes beyond the amount actually necessary to fulfill the purposes of bail — *i.e.*, to reasonably ensure the person’s appearance and protect the victim, other persons, and the community.⁷ Thus, a trial court may not impose excessive monetary bail with the intended purpose of ensuring that the defendant remains in custody.⁸ Nor may a trial court impose an excessive monetary bail to punish the defendant.⁹

Lastly, a trial court that sets a monetary bail above the defendant’s ability to pay must provide a “particularized statement” that addresses how the monetary

⁵ See *Gilbert v. State*, 540 P.2d 485, 486 n.12 (Alaska 1975) (citing *Reeves v. State*, 411 P.2d 212 (Alaska 1966)).

⁶ U.S. Const. amend. VIII; Alaska Const. art. I, § 12; see also *Hamburg v. State*, 434 P.3d 1165, 1165-67 (Alaska App. 2018) (holding prior bail statute that included a “no bail” presumption unconstitutional under the Alaska Constitution).

⁷ See *Stack v. Boyle*, 342 U.S. 1, 5 (1951); *Doe v. State*, 487 P.2d 47, 51 (Alaska 1971); *Torgerson v. State*, 444 P.3d 235, 237 (Alaska App. 2019); see also AS 12.30.011(b) (requiring trial court to impose the least restrictive bail condition(s) that will “reasonably ensure the person’s appearance and protect the victim, other persons, and the community”).

⁸ *Reeves*, 411 P.2d at 216 (“It would be unconstitutional to fix excessive bail to assure that a defendant will not gain his freedom.”); cf. *West v. State*, Court of Appeals File No. A-11993 (Order dated Sept. 2, 2014) (noting that a court may set bail in an amount that imposes a financial strain on a defendant but the goal of incentivizing compliance with court appearance is not served by setting bail in an amount so high that it is financially impossible for the defendant to secure release).

⁹ See, e.g., *Francis v. State*, 2021 WL 1346285, at *2 (Alaska App. Jan. 15, 2021).

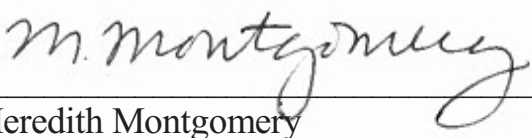
amount was calculated and that directly explains “why no less restrictive conditions will suffice.”¹⁰

Accordingly, **IT IS ORDERED:**

This case is REMANDED for a hearing on the family’s ability to meet monetary conditions of release and for reconsideration of the monetary bail amount in light of that information. If bail is set above the family’s ability to pay, the trial court shall provide a particularized statement explaining why there are no less restrictive bail conditions that would suffice. We express no opinion as to the appropriate monetary bail conditions in this case.

Entered at the direction of the Court.

Clerk of the Appellate Courts


Meredith Montgomery

cc: Judge Peters
Trial Court Clerk - Bethel
Distribution:

Email:
Jura, Emily L.
Rosenstein, Kenneth M.

¹⁰ See *Francis*, 2021 WL 1346285, at *2 n. 10 (citing *Brangan v. Commonwealth*, 80 N.E.3d 949, 964-66 (Mass. 2017) (requiring court to provide particularized statement as a matter of due process and “because holding a defendant on an unaffordable bail amount defeats bail’s purpose of securing pretrial liberty”)); see also *United States v. Mantecon-Zayas*, 949 F.2d 548, 551 (1st Cir. 1991) (holding that when a court enters an order for pretrial release containing a financial condition that the defendant in good faith cannot fulfill, the court must explain why that particular requirement is an indispensable component of the conditions for release); see generally AS 12.30.006(f) (requiring the court to issue written or oral findings that explain the reasons for imposing the particular conditions of release).